

Appl. No. 10/696,721
Amdt. dated Feb 3, 2005
Reply to Office Action of Nov. 3, 2004

REMARKS

Applicant acknowledges with appreciation the allowance of claims 6 – 8 and 10 – 14 and allowability of the subject matter of claims 4, 9, 20, and 21, if rewritten in independent form.

In the Office Action mailed November 3, 2004, claims 1, 2, and 15 – 18 were rejected under 35 U.S.C. §102(b), as allegedly anticipated by U.S. Patent No. 4,926,962 to Graham et al (the "Graham patent"). Claims 3, 5, and 19 were rejected under 35 U.S.C. §103(a), as allegedly obvious over the Graham patent in light of certain statements of Official Notice. Claims 2, 9, and 16 were rejected under 35 U.S.C. §112¶ 2, as allegedly indefinite for including the phrase "and/or." Also, claims 13 and 14 were objected to as substantially identical to claims 10 and 11. In response, Applicants have canceled claims 13 and 14.

By this Amendment, Applicants have amended independent claims 1 and 15 and have amended dependent claim 2, 9, and 16. No new matter has been introduced by these amendments. These amendments, and the distinctions of the claimed invention from the cited patent, are discussed below.

I. The Indefiniteness Rejection of Claims 2, 9, and 16

As mentioned above, claims 2, 9, and 16 were rejected under 35 U.S.C. §112¶ 2, as allegedly indefinite for including the phrase "and/or," making uncertain whether the limitation should be considered in combination or alternative.

In response, Applicants intended for the rejected claims to be open-ended and inclusive of indentations and perforations in combination or alternative. As such, Applicants have replaced "and/or" with "or," clarifying that the front surface includes at least indentations or at least perforations. Accordingly, the indefiniteness rejection of to claim 2, 8, and 16 should now be withdrawn.

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II. The Anticipation Rejection of Claims 1, 2, and 15 – 18

As mentioned above, claims 1, 2, and 15-18 were rejected under 35 U.S.C. §102(b), as allegedly anticipated by the Graham patent.

In support of this rejection, the Examiner asserted as follows:

"Graham et al. teach a planar diaphragm loudspeaker for use in a suspended ceiling grid defining rectangular openings, comprising a rectangular, planar diaphragm (Fig. 3, Item 14) formed of a unitary piece of polymer material sized to fit an opening of the ceiling grid and having a front surface and a rear surface, the front surface defining a three dimensional, textured pattern (Figs. 2 and 3, Item 10) across the entirety of the front surface . . ."

Office Action dated November 3, 2004, page 3.

Applicants respectfully disagree with the Examiner's characterization of the Graham patent's disclosure. The Examiner correctly identifies the diaphragm (14) in Fig. 3; however, the front surface of the diaphragm does not define a three dimensional, textured pattern. Instead, Graham discloses a loudspeaker cover (10) that is attached to a front surface of a diaphragm (14), the front surface of the cover – not the diaphragm – defines a three-dimensional pattern. The loudspeaker cover is a separate structure of closed cell foam and is glued to the diaphragm. (col. 2, lines 65-67; col. 3, lines 50-60.)

Claims 1 and 2

As amended, independent claim 1 defines a loudspeaker in which, the diaphragm is of a unitary construction and the front surface of the diaphragm defines a three-dimensional, textured pattern. Claim 2 depends from claim 1 and further defines the textured pattern as including perforations or indentations.

The Graham patent fails to disclose, or even suggest, a loudspeaker having a planar diaphragm of a unitary construction, in which the front surface of the diaphragm defines a three dimensional, textured pattern. Accordingly, the §102(b) rejection of independent claim 1

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and its dependent claim 2, as allegedly anticipated by the Graham patent, is improper and should be withdrawn.

Claims 15 – 18

As amended, independent claim 15 defines a method of manufacturing a planar diaphragm loudspeaker in which, among other things, a unitary, planar diaphragm is subjected to a secondary operation to define a three-dimensional, textured pattern across the front surface of the diaphragm such that the front surface of the diaphragm contributes to the three-dimensional, textured pattern. Claims 16 – 18 depend from claim 15, adding features that further define the invention.

As mentioned above, the Graham patent fails to disclose, or even suggest, a loudspeaker in which the front surface of the diaphragm defines a three dimensional, textured pattern. In contrast, the diaphragm disclosed in the Graham patent forms no part of the three dimensional, textured pattern. Instead, the Graham patent is directed to a loudspeaker cover that covers the entirety of the diaphragm's front surface. Thus, the diaphragm in no way contributes to the three dimensional, textured pattern. Accordingly, the §102(b) rejection of independent claim 15 and its dependent claims 16 – 18, as allegedly anticipated by the Graham patent, is improper and should be withdrawn.

III. The Obviousness Rejection of Claims 3, 5, and 19

As mentioned above, claims 3, 5, and 19 were rejected under 35 U.S.C. §103(a), as allegedly obvious over the Graham patent in light of certain statements of Official Notice. With regard to claims 3 and 19, Office Notice was taken that "it is well known in the art of engineering processes to employ etching to remove material from an element to obtain a desired configuration." With regard to claim 5, Office Notice was taken that "it is well known in the art of acoustics to employ a shroud to cover and protect the diaphragm, and to be fixed to the diaphragm in a desired way providing flush mounting or a tegular-drop mounting."

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Nonetheless, the Office Notices fail to address the shortcomings of the Graham patent. Moreover, with regard to each instance of Official Notice, in accordance with 37 C.F.R. § 1.104 (d)(2) and to preserve Applicants' argument on appeal, Applicants request that the Examiner provide documentary evidence of the asserted common knowledge. *See, MPEP* 2144.03 ("A seasonable challenge [to a statement of "well known" art] constitutes a demand for evidence made as soon as practicable during prosecution.") Accordingly, the obviousness rejection of claims 3, 5, and 19, is improper and should be withdrawn.

IV. Conclusion

The foregoing remarks should place this application in condition for allowance. If any matters remain outstanding after consideration of this Amendment that the Examiner believes might be expedited by a telephone conference with Applicants' representative, the Examiner is respectfully requested to call the undersigned attorney at the number indicated below. If any additional fees are due in connection with this filing, please charge the fees to our Deposit Account No. 19-1853.

Date: February 3, 2005

Respectfully Submitted,

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